

Notice of Allowability

Application No.

10/518,942

Examiner

Patricia L. Hailey

Applicant(s)

BAUMGART ET AL.

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Applicants' remarks and amendments filed on June 21, 2006.
2. ☒ The allowed claim(s) is/are 1-10 and 13-17.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date August 31, 2006.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

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Applicants' remarks and amendments, filed on June 21, 2006, have been carefully considered. Claims 11 and 12 have been canceled; no new claims have been added.

Claims 1-10 and 13-17 remain pending in this application.

Support for the amendments to claim 1 can be found in claim 12 as originally filed, and in the Specification at page 6, lines 13-22.

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Applicants' Priority Document was filed on December 16, 2004.

Withdrawn Rejections

The 102(b) rejection of claims 1-15 as being anticipated by European Patent No. 1 092 758 (Applicants' submitted art), stated in the previous Office Action, has been withdrawn in view of Applicants' amendments to the claims, and in view of Applicants' persuasive arguments traversing this rejection.

EXAMINER'S AMENDMENT

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided

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by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Anne Sabourin on August 21, 2006.

The application has been amended as follows:

- a. In line 6 of claim 1, please delete the phrase "total weight" and insert therefor the phrase *–overall solids content–*.
- b. In line 3 of claim 13, please delete the phrase "total weight" and insert therefor the phrase *–overall solids content–*.
- c. Please change the dependency of claim 13 from "12" to "1".

Support for the amendments to claims 1 and 13 can be found in the Specification at page 6, lines 13-22; these amendments have been made to ensure commensurate scope with the Specification.

The dependency of claim 13 was changed because claim 12 has been canceled.

Allowable Subject Matter

3. Claims 1-10 and 13-17 are allowed.

Reasons for Allowance

4. The following is an examiner's statement of reasons for allowance:

As presented in Applicants' arguments, the European Patent does not teach the claimed percentage range of hydrophobic and hydrophilic silica-based nanoparticles,

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said percentage range being from 0.8 to 3%. The European Patent discloses silica contents outside this presently claimed range.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Amidaiji et al. (U. S. Patent No. 6,451,437) is the US equivalent to European Patent No. 1 092 758.

Ingman (U. S. Patent No. 6,808,715) discloses an emulsion comprising water, hydrophilic particles, and hydrophobic particles. The particles form shells encapsulating a gas that are suspended in the water, said shells comprising an external layer of hydrophilic particles and an internal layer of hydrophobic particles, said layers adjacent to one another. Although the respective particles exhibit surface areas and particle sizes comparable to that recited in Applicants' claims, the amount of hydrophobic particles ranges from about 0.5% to about 1.5% by weight (col. 8, lines 4-32), and the amount of hydrophilic particles ranges from about 7% to about 11% (col. 8, line 54 to col. 9, line 5), said percentages based on the emulsion. Thus, the combined content of hydrophobic and hydrophilic particles in the emulsion of Ingman is outside Applicants' claimed range.

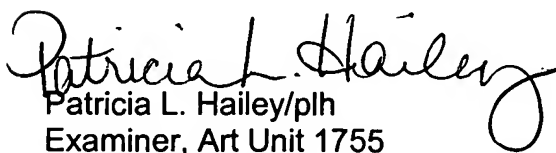
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Hailey whose telephone number is (571) 272-1369. The examiner can normally be reached on Mondays-Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo, can be reached on (571) 272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 1700 Receptionist, whose telephone number is (571) 272-1700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Patricia L. Hailey/plh
Examiner, Art Unit 1755
September 5, 2006


J.A. LORENZO
SUPERVISORY PATENT EXAMINER